

Appl. No.: 10/008,663
Response dated November 11, 2003
Reply to Office action of August 12, 2003

Remarks/Arguments

Favorable consideration and allowance of the instant application is respectfully requested in view of the following remarks.

Claims 1, 3-6 and 8-10 are rejected under 35 U.S.C. § 102(a) as being anticipated by JP 11-322534-A. This rejection is respectfully traversed for the following reasons.

Initially, Applicant would again like to note that it is well settled that a factual determination of anticipation requires the disclosure, in a single reference, of each and every element of the claimed invention, and an Examiner must identify wherein each and every facet of the claimed invention is disclosed in the applied reference. See, In re Levy, 17 USPQ2d 1561 (Bd. Pat. App. & Inter. 1990). It is Applicant's position that the JP reference fails to anticipate the present invention on the grounds that it fails to disclose each and every claimed element thereof.

As was previously argued by Applicant, the JP reference appears to be directed to the formation of some sort of ceramide synthesis accelerator by synthesizing a microbe/bacteria in a culture medium. It appears, based on a reading of the now translated reference, that the above-identified bacteria are somehow cultured in butylene glycol to form the desired accelerator. It remains unclear, however, what the final product is, i.e., is it merely a mixture of all of these ingredients, or does some sort of a reaction/synthesis occur.

Applicant had also previously stated that it was unclear whether a mushroom microbial-cell culture is the same as a mushroom extract. In response thereto, the Examiner now contends that the active agent removed from a mushroom is clearly a mushroom extract. Applicant, however, is unable to find where, specifically, the JP reference refers to a mushroom active agent. Also, in the event that Applicant somehow inadvertently missed this disclosure within the reference, the Examiner has not proven that

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a mushroom active ingredient is analogous to a mushroom extract. It has been held that, "The Patent Office ... may not, because it may **doubt** that the invention is patentable, resort to speculation, unfounded assumptions or hindsight to supply deficiencies in its factual basis." See, In re Warner, 154 USPQ 173, 178 (CCPA 1967). The JP reference clearly discloses some sort of biological culturing taking place in a butylene glycol medium.

It is unclear to Applicant what the resultant product of the biological culture is. It does not appear to be simply a mixture of butylene glycol and mushroom extract, per the claimed invention. The term "culture" implies some sort of biological reaction occurring within the medium. Unless and until the Examiner can show that what is disclosed in the JP reference is merely a mixture of butylene glycol and mushroom extract, as opposed to some biological synthesis, this reference cannot be said to anticipate the present invention.

In any event, Applicant respectfully submits that it cannot be determined what the final product of the JP reference is and whether it contains one of the claimed components, namely, a mushroom extract. As a result, this reference should not be relied upon to anticipate the claimed invention.

Accordingly, for all of the above-stated reasons, reconsideration and withdrawal of this rejection is respectfully requested.

It is believed that the foregoing reply is completely responsive under 37 CFR 1.111 and that all grounds for rejection are completely avoided and/or overcome. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

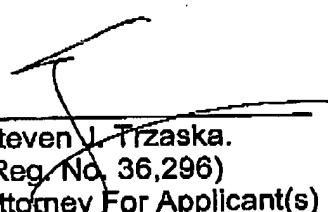
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The Examiner is requested to telephone the undersigned attorney if any further questions remain which can be resolved by a telephone interview.

Respectfully submitted,

Cognis Corporation
Patent Department
300 Brookside Avenue
Ambler, PA 19002

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Steven J. Trzaska.
(Reg. No. 36,296)
Attorney For Applicant(s)
215-628-1416